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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/734, 592	10/22/96	GOODEARL	A CNS-5250.27-

HM12/1107

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EXAMINER

GLUCKER, S

ART UNIT	PAPER NUMBER
1647	90

DATE MAILED: 11/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.	Applicant(s)
08/734,592	Goodear et al.
Examiner	Group Art Unit
Stephen Lucker	1647

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

Responsive to communication(s) filed on 8/24/00

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 132, 136-138, + 141-143 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_

is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 132, 136-138, + 141-143 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) 08/036,555

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 7

Interview Summary, PTO-413

Notice of References Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

## Office Action Summary

*Response to Amendment*

1. The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1647.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Any objections or rejections made in a previous Office Action that are not herein reinstated have been withdrawn.
4. Claims 132, 136-138, and 141-143 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 5,602,096. Although the conflicting claims are not identical, they are not patentably distinct from each other because the process steps of administering a ligand for the erb B2 receptor or a GGF are the same (*Ex parte Novitski*, 26 USPQ 1391). The instant process claims recite acetylcholine receptor synthesis stimulating activity. The sequences recited in the instant claims either encode an amino acid sequence comprising, or are an amino acid sequence comprising, SEQ ID NO: 170 recited in claim 2 of U.S. Patent No. 5,602,096 or its encoding sequence recited in claim 1 of the patent. New claims 142-143 recite limitations which are inherent to the product used in the patented claims.

Serial Number: 08/734,592

4

Art Unit: 1647

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*SG*

Stephen Gucker

November 6, 2000

*Gary L. Kunz*  
GARY L. KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600



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No.	Doccode	Number of pages
1	A...	1
2	REM	1
3	XT/	1
4	N/AP	1
5	DIST	2
		5

Total number of pages: 10

Remarks:

Order of re-scan issued on .....